



I.C.R. 43. Presence of the Defendant.

Idaho Criminal Rule 43. Presence of the Defendant

(a) Presence Required. Except as otherwise provided by this rule, the defendant must be present at:

- (1) the arraignment,
- (2) the time of the plea,
- (3) every stage of the trial including the impaneling of the jury and the return of the verdict, and
- (4) the imposition of sentence.

(b) Presence Not Required. A defendant need not be present under any of the following circumstances:

- (1) The defendant is a corporation represented by counsel who is present.
- (2) The defendant is charged only with misdemeanors and is represented by counsel who is present or defendant has given written consent to proceeding without the defendant's physical presence at arraignment, plea, trial or imposition of sentence.
- (3) The proceeding involves only a conference or hearing on a question of law.
- (4) The proceeding involves only the reduction of sentence under Rule 35.

(c) Waiving Continued Presence.

(1) *In General.* A defendant who was initially present at trial or other proceeding waives the right to be present under the following circumstances:



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(A) when the defendant is voluntarily absent after the trial has begun, regardless of whether the court informed the defendant of an obligation to remain during trial; or

(B) when the court warns the defendant that it will remove the defendant from the courtroom for disruptive behavior and the defendant continues to act in a manner so disorderly, disruptive and disrespectful as to substantially impede or make impossible the orderly conduct of the trial or other proceeding. Alternatively, the court may:

(i) bind and gag the defendant;

(ii) cite the defendant for contempt; or

(iii) take other appropriate action.

(2) *Waiver's Effect.* If the defendant waives the right to be present, the proceeding may continue to completion, including the verdict's return and sentencing, during the defendant's absence.

(Adopted February 22, 2017, effective July 1, 2017.)

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